

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

<b>RANDALL BIAS,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>CIV-06-248-R</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
<b>et al.,</b>	)	
	)	
<b>Respondents.</b>	)	

**ORDER**

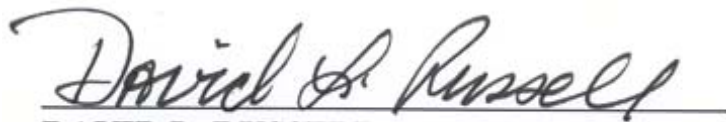
Before the Court are the Report and Recommendation of United States Magistrate Judge Gary M. Purcell entered March 31, 2006 and “Petitioner’s Motion to Object to the Report and Recommendation of the Magistrate Court” filed May 18, 2006.

Petitioner does not object to the Magistrate Judge’s recommendation that grounds one, two, three and five in Petitioner’s 28 U.S.C. § 2241 be dismissed without prejudice for lack of jurisdiction; indeed, Petitioner moves for dismissal of those grounds for relief. Petitioner, however, makes a lengthy argument in support of his objection to the Magistrate Judge’s recommendation that the fourth ground of the petition be dismissed with prejudice. Petitioner’s argument is directed to the merits of his claim that he should receive credit on his federal sentence for time served from March 20, 1998 to the date Petitioner began serving his federal sentence, April 27, 2000. However, the Magistrate Judge recommended that this claim or ground for relief be dismissed as successive because a federal court had previously adjudicated this claim in § 2255 proceedings, at Petitioner’s insistence. The Magistrate

Judge was correct. *See* 28 U.S.C. § 2244(a); *George v. Perrill*, 62 F.3d 333, 334 (10<sup>th</sup> Cir. 1995); *Ackerman v. Zenon*, 150 Fed. Appx. 772 (10<sup>th</sup> Cir. Sept. 30, 2005) (No. 05-1167); *Verner v. Attorney General*, 2006 WL 1775752 (10<sup>th</sup> Cir. June 29, 2006) (No. 06-1063); *Rhodes v. True*, 131 F.3d 152, 1997 WL 755387 (10<sup>th</sup> Cir. Dec. 8, 1997) (No. 97-3191). Inasmuch as Petitioner pleaded guilty, he cannot now claim that he is factually innocent, *see Ackerman v. Zenon, supra*, at 774, so he cannot show that a fundamental miscarriage of justice would occur if his claim is not reviewed.

In accordance with the foregoing, Petitioner's Objection is without merit, the Report and Recommendation of the Magistrate Judge is ADOPTED in its entirety and the first, second, third and fifth grounds for relief in the 28 U.S.C. § 2241 petition for a writ of habeas corpus herein are DISMISSED without prejudice for lack of jurisdiction and the fourth ground for relief, which is successive, is DISMISSED with prejudice.

**It is so ordered this 7<sup>th</sup> day of July, 2006.**

  
DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE